

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY BAILEY,

Case No. 2:19-cv-01725-GMN-BNW

Petitioner,

v.

ORDER

WARDEN BRIAN WILLIAMS, et al.,

Respondents.

Petitioner Anthony Bailey, a *pro se* Nevada prisoner, commenced this habeas action by filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Following a stay and abeyance allowing Bailey to exhaust claims in state court, Bailey moved to reopen this action and filed a new petition, which the Court construed as a motion to amend and granted. ECF Nos. 92, 93, 109. Currently before the Court is Bailey's Motion for Appointment of Counsel (ECF No. 111). Also before the Court are Respondents' Motions to Extend (ECF Nos. 113, 117).

I. Motion for Appointment of Counsel

Following a jury trial, where Baily represented himself, the state court entered a judgment of conviction for one count of sexual assault with a deadly weapon, two counts of possession or sale of document or personal identifying information to establish false status or identity, and one count of misdemeanor coercion. Ex. 255. Bailey first moved for appointment of counsel in October 2019. ECF No. 1-4. The Court denied his motion finding that he "demonstrated sufficient ability to write and articulate his claims and requests in the petition and accompanying motion," and that the issues in the case "are not particularly complex." ECF No. 3 at 3. Baily filed a second motion for appointment of counsel in April 2020. ECF No. 17. The Court found that "[n]othing in Bailey's renewed motion demonstrates that the appointment of counsel is now warranted. ECF No. 19. Bailey filed a third motion for appointment of counsel in

1 August 2020. ECF No. 65. The Court again denied his motion finding that the appointment of
2 counsel was not justified in this instance. ECF No. 80.

3 Bailey has now filed a fourth motion requesting appointment of counsel to assist him in
4 this habeas case. He asserts that the law librarian is depriving him of legal supplies in order to
5 impede his litigation and to subject him to institutional infractions. He further asserts the legal
6 issues in this case are complex and warrant the appointment of counsel.

7 There is no constitutional right to appointed counsel in a federal habeas corpus
8 proceeding. *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549
9 U.S. 327, 336–37 (2007)). An indigent petitioner may request appointed counsel to pursue
10 habeas relief. 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is generally
11 discretionary. *Id.* § 3006A(a)(2) (authorizing appointment of counsel “when the interests of
12 justice so require”). However, counsel must be appointed if the complexities of the case are such
13 that denial of counsel would amount to a denial of due process, and where the petitioner is so
14 uneducated that he is incapable of fairly presenting his claims. *LaMere v. Risley*, 827 F.2d 622,
15 626 (9th Cir. 1987); *Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980).

16 Bailey had filed numerous motions in this case and pursued post-conviction relief in state
17 court following a grant of a stay and abeyance in this matter. He has thus demonstrated
18 sufficient ability to articulate his claims and seek relief in both the state and federal courts.
19 Further, Bailey’s unsubstantiated allegation regarding legal supplies does not suggest that denial
20 of counsel would amount to a due process violation. For these reasons, the current motion fails
21 to present a change in circumstances as it relates to the “interests of justice” standard. The Court
22 therefore denies the motion.

23 II. Motions to Extend

24 Respondents seek an extension of time to file their response to the first amended petition.
25 (ECF Nos. 117, 118.) The Court finds that the request is made in good faith and not solely for the
26 purpose of delay, and therefore, good cause exists to grant the motions. It is therefore ordered that
27 Respondents’ motions are granted *nunc pro tunc*.
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1 **III. Striking ECF No. 97 for Failure to File Redacted Copy**

2 In December 2022, Bailey filed a request for judicial notice attaching documents that do
3 not comply with the redaction requirements of LR IC 6-1(a)(1) and (3). ECF No. 97 at 5. The
4 Court sealed the document because it contains personal-data identifiers, such as an individual's
5 social security number and date of birth, and instructed Bailey to file a redacted publicly
6 available copy of ECF No. 97 that complies with the Local Rules. ECF No. 99.


7 Bailey then requested that the Court seal ECF No. 97. ECF No. 102. The Court denied his
8 request and again instructed him to file a redacted publicly available copy within fourteen days
9 of the Court's order. ECF No. 109. The Court warned that if Bailey did not comply, the Court
10 would strike ECF No. 97. To date, Bailey has not complied with the Court's order by filing a
11 redacted publicly available copy of ECF No. 97. Accordingly, the Court instructs the Clerk of
12 the Court to strike ECF No. 97.

13 **IT IS THEREFORE ORDERED** that Petitioner Anthony Bailey's Motion for
14 Appointment of Counsel (ECF No. 111) is **DENIED**.

15 **IT IS FURTHER ORDERED** that Respondents' Motions to Extend (ECF Nos. 113, 117)
16 are **GRANTED** *nunc pro tunc*.

17 **IT IS FURTHER ORDERED** that the Clerk of the Court strike ECF No. 97 from the
18 docket.

19 DATED: February 9, 2024

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23 GLORIA M. NAVARRO
24 UNITED STATES DISTRICT JUDGE
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